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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,031	06/25/2001	Kenneth H. Tarbet	4189-00500	7507
30652 7590 04/30/2008 CONLEY ROSE, P.C. 5601 GRANITE PARKWAY, SUITE 750 PLANO, TX 75024				
EXAMINER ALAM, SHAHID AL				
ART UNIT 2162		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/888,031

Applicant(s)

TARBET, KENNETH H.

Examiner

Shahid Al Alam

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7, 9, 10 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 9, 10 and 16-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Response to Applicant's **election with traverse** of Group I, claims 1 – 9 for the Election/Restriction Requirements
2. Applicant's election with traverse of Group-Species I (claims 7, 9 – 10 and 16 – 25) in the reply filed on February 8, 2008 is acknowledged.

With reference to **"Related Inventions"**, MPEP 808.02 states:

Where, as disclosed in the application, the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 U.S.C. 121 is never proper (MPEP 806.05). If applicant optionally restricts, double patenting may be held. **Where the related inventions as claimed are shown to be distinct under the criteria of MPEP 806.05(c) - 806.05 (i), the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following:**

- (A) A separate status in the art when they are classifiable together: Even though they are classified together, each subject can be shown to have formed a separate subject for inventive effort when an explanation indicates a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.
- (B) A different field of search: Where it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists, a different field of search is shown, even though the two are classified together.

The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search. Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions. The examiner has fulfilled his duties by providing appropriate explanation as to how the related inventions of Groups-Species I through V are distinct **under the criteria of MPEP: 806.05(c) - 806.05(i)**. Please see the highlighted sections:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

SPECIES I: Claims 9, 10 and 16 – 25, drawn to customer incentive report.

SPECIES II: Claim 26, drawn to the product information comprises pricing information.

SPECIES III: Claims 27 – 28, drawn to the product information comprises wellbeing information.

SPECIES IV: Claim 29, drawn to the purchase information.

SPECIES V: Claims 30 – 32, drawn to the customer is associated with a customer account.

The inventions are distinct, each from the other because of the following reasons:

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Besides that requiring an examiner does not seem to be in conformance with two well known Patent Goals outlined in the published Strategic Plan of the U. S. Patent and Trademark Office, available to the general public at www.uspto.gov. **The purpose of these goals is an efficient and streamlined patent process to reduce the cycle time and improve the quality of a patent issued.** The common sense is also that searching in limited and appropriate areas would turn out a prior art reference faster and thus help close the prosecution of a case earlier.

So in view of the above mentioned MPEP sections and in the spirit of fulfilling stated Patent Goals, the examiner respectfully submits that, the requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 9, 10 and 16 – 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,649,114 issued to David Deaton et al. ("Deaton").

With respect to claim 7, Deaton teaches method of improving customer loyalty via real time generation and provision of a customer incentive report from a point of sale (column 4, lines 57 – 60), said method comprising:

utilizing a computer to execute a plurality of steps, the steps comprising (see Figs. 2, 10A, Deaton);

selecting a product information related to product (see col. 68, lines 43-45, Deaton);

storing a purchase information related to the purchase of the product by a customer (see col. 68, lines 45-55, Deaton);

storing a customer information related to the customer, the customer information associating the customer with the purchase (see col. 69, lines 9-20 et seq, Deaton);

storing a promotion information related to a promotion of the product, the promotion being independent of the customer information, wherein the promotion information includes both current and future promotion incentives (column 90, lines 36 – 50 and column 120, lines 12 – 29);

determining an intersection of the promotion information, the purchase information, and the customer information and storing the intersection in a database as the customer incentive report (see col. 90, lines 36-50, Fig. 35, Deaton);

wherein the database comprises a first table containing the product information second table comprising the purchase information, and a third table comprising the promotion information and a reference to a row of at least one table in the database (see col. 93, lines 5-35, Fig. 38, Deaton); and,

following the determining step (see Figs. 10A, 35, Deaton)) step:

fashioning the second table responsive to an item identifier attribute of the first table (see col. 104, lines 20-24, Deaton); and

picking at least one row from first table (see col. 100, lines 10-25, Deaton); and, receiving an identifier of a first input table comprising at least a portion of one of the first tables, the first input table comprising a plurality of rows, at least one row consisting of at least one selected from an item effective identifier and a user effective identifier (see col. 100, lines 10-25, Deaton); and

fashioning the third table with the identifier (see col. 104, lines 20-24, Deaton).

As to claim 9, Deaton teaches the delivery step comprises delivery of a computer-readable copy of the customer incentive report to the corresponding user (column 118, lines 28 – 35).

As to claim 10, Deaton teaches the delivery step comprises delivery of a printed copy of the customer incentive report to the corresponding user (see col. 118, lines 28-35, Fig. 17A and B, Deaton).

As to claims 16 – 19, the computer readable copy of the customer incentive report includes current incentive offers, future incentive offers, or a combination thereof, the offers disclose pricing and wellbeing information (column 118, lines 28 – 38 and column 119, lines 4 – 50).

As to claims 20 – 23, the printed copy of the customer incentive report includes current incentive offers, future incentive offers, or a combination thereof, the offers disclose pricing and wellbeing information (column 118, lines 28 – 38 and column 119, lines 4 – 50).

As to claim 24 and 25, customer incentive report includes customer loyalty program information (column 7, lines 31 – 50).

Contact Information

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shahid Al Alam/
Primary Examiner, Art Unit 2162

April 27, 2008